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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION**

CASSEE GALE,	§	SECOND MOTION TO STAY TRIAL
	§	
Plaintiff,	§	
	§	
vs.	§	CASE NO. 1:09-CV-00129-SA
	§	
BRINKER INTERNATIONAL	§	
PAYROLL COMPANY, L.P.,	§	
	§	
Defendant.	§	

PLAINTIFF'S UNOPPOSED MOTION TO STAY

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Cassee Gale respectfully moves this Honorable Court to stay the this matter pending a ruling by the United States Court of Appeals for the Fifth Circuit on issues related to the instant litigation. In support of her motion, Plaintiff would respectfully show the Court as follows:

I. BACKGROUND AND ARGUMENT

1. On November 1, 2005, Jennifer Roussell ("Roussell"), a former Chili's server, filed a collective action lawsuit (the "Roussell Litigation") under the Fair Labor Standards Act

(“FLSA”) against Brinker International Payroll Company, L.P. (“Brinker”).¹ In her lawsuit, Roussell claimed that Brinker violated the FLSA’s minimum wage provisions by maintaining a tip pool that included non-tipped employees. Specifically, Roussell argued that Brinker required her and other servers to share their tips with Quality Assurance workers, who, she claimed, did not work in a position that customarily and regularly received tips.

2. Plaintiff Cassee Gale joined the Roussell Litigation as a plaintiff on or about October 11, 2006. On January 26, 2009, the Court partially decertified the class, at which time Plaintiff Gale was no longer a part of the Roussell Litigation and became free to pursue her claims against Brinker via a separate lawsuit.

3. On March 23, 2009, following a jury trial that exceeded two (2) weeks, the jury returned a verdict in favor of Roussell and the other class members that remained a part of the Roussell Litigation, finding that Quality Assurance workers do not work in positions that customarily and regularly receive tips. The Court entered final judgment in favor of Plaintiffs on June 18, 2009. Brinker appealed the Court’s entry of final judgment to the United States Court of Appeals for the Fifth Circuit on August 19, 2009. On November 3, 2010, Brinker’s appellate brief was filed in the Fifth Circuit. On February 14, 2011, Roussell filed her response. The briefs have been on file and ripe for a ruling since February 14, 2011.

4. Brinker has appealed the standard used by the Court in the Roussell Litigation to determine whether, as a matter of law, Quality Assurance workers work in positions that customarily and regularly receive tips, thereby making such workers ineligible to participate in a tip pool. Brinker has appealed the voluntariness standard used by the Court in the Roussell Litigation. These are the very issues to be determined in the instant litigation. Accordingly, in the interest of judicial economy, Plaintiff Gale asks that this Court stay the instant matter until

¹ That action was styled Civil Action No. 4:05-cv-03733; *Jennifer Roussell, on behalf of herself and others similarly situated v. Brinker International Payroll Company, L.P.*; In the United States District Court for the Southern District of Texas—Houston Division.

after the Fifth Circuit has made a determination on these issues, which may well be instructive to the outcome of this case. Indeed, should the Fifth Circuit find in favor of the Plaintiffs in the Roussell Litigation—or in favor of Brinker, for that matter—such a decision could provide guidance to this Court. Furthermore, once these issues have been resolved at the appellate level, resolution may be achievable without the need for trial.

5. There are several similar cases around the country based on the Roussell Court's January 26, 2009 ruling (which partially decertified the class). In several jurisdictions the cases have been stayed pending the Fifth Circuit's pending decision. For example: Civil Action No. 2:09-CV-00165; *Betty Romel v. Brinker International Payroll Company, L.P.*; In the United States District Court for the Southern District of Texas – Corpus Christi Division (Exhibit A)² and Civil Action No. 2:10-CV-00025; *Adriana Ioina and Wesley Callender v. Brinker International Payroll Company, L.P.*; In the United States District Court for the Southern District of Texas – Corpus Christi Division (Exhibit B).

II. PRAYER

6. Plaintiff Cassee Gale respectfully requests that the Court immediately stay this case until after the United States Court of Appeals for the Fifth Circuit has ruled on Brinker's appeal in the Roussell Litigation.

² This matter has been stayed and although it appears that the Order has expired, the Court has not instituted another Docket Control Plan, nor has any other action been taken by the Court, Defendants, or Plaintiff to advance this matter. It appears that the stay is still in effect.

Respectfully submitted,

By: /s/ Todd Slobin
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ATTORNEYS FOR PLAINTIFF CASSEE GALE

CERTIFICATE OF CONFERENCE

Plaintiff's counsel contacted Defendant Brinker International Payroll Company, L.P. counsel to discuss the filing of this Motion on May 13-17, 2011. Defendant's counsel is UNOPPOSED to the filing of this Motion.

/s/ Todd Slobin
TODD SLOBIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record via electronic means; First Class U.S. Mail; email; hand delivery; and/or by facsimile on this the 17th day of May, 2011.

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